

### **REMARKS**

This is a full and timely response to the outstanding non-final Office Action mailed August 04, 2005. Reconsideration and allowance of the application and presently pending claims, as amended, are respectfully requested.

#### **Present Status of Application**

Upon entry of the amendments in this response, claims 23 - 37 are now pending in the present application. More specifically, claims 23, 24, 31 and 36 correspond to amended versions of original claims 1, 2, 9 and 15. These amendments and additions are specifically described hereinafter. It is believed that the foregoing amendments and additions add no new matter to the present application.

The Office Action rejected claims 1, 3-9, 11-16, 18, 20-22 under 35 USC §102(b) as being anticipated by DeBusk US 5,792,128 (hereinafter '128).

The Office Action rejected claims 15, 19 under 35 USC §102(b) as being anticipated by DeBusk US 5,725,517 (hereinafter '517).

The Office Action rejected claims 2, 10, 17 under 35 USC §103(a) unpatentable over DeBusk ('128).

No new matter has been added to the application by the amendments made herein. For at least the following reasons, it is submitted that all claims of this application are in condition for allowance. Reconsideration of the present application, as amended, is respectfully requested.

**Summary of Present Invention:**

A surgical towel with x-ray detectable material which eliminates the need for re-entry into a patient after operating in situations where operating towels are missing. The surgical towel comprises a sheet of fabric having x-ray detectable material sewn inside the hem woven into or otherwise attached to the fabric. The hem can be stitched with a thread of a different color than the color of the fabric to make the towel easily identifiable as being x-ray detectable. The x-ray detectable material can easily be observed by medical personnel upon examination of an x-ray. If no x-ray detectable material is observed, unnecessary re-entry into the patient is prevented.

**Response to Claim Rejections Under 35 USC Section 102**

Claims 1, 3-9, 11-16, 18, 20-22 have been rejected under 35 USC Section 102(b) as purportedly being anticipated by DeBusk ('128).

**Claims 1-8 now correspond to Claims 23-30**

Independent Claim 23 recites:

A surgical towel, comprising:

a sheet of woven fabric comprising at least one stitched hem;

a thread for stitching the hem; and

at least one piece of x-ray detectable material *attached to the fabric by the thread, the x-ray detectable material protruding from the hem*, the x-ray detectable material allowing indication of the surgical

towel upon x-ray *and visually identifying the surgical towel as x-ray detectable.*

Independent claim 23 is allowable for at least the reason that DeBusk ('128) does not disclose, teach or suggest the features that are highlighted in claim 23 above.

More specifically, DeBusk ('128) does not teach attaching the x-ray detectable material to the fabric by the thread. DeBusk discloses capturing the radiopaque element within a first fold and folding the first fold to make a second fold and securing the folds with the radiopaque element *captured within the folds* (column 5, line 60 – column 6 line 6).

Additionally, as shown in Figures 1 and 2 and highlighted in the claims, DeBusk discloses that the radiopaque element is captured within a first fold. DeBusk does not disclose “*the x-ray detectable material protruding from the hem*” as recited by claim 23.

Furthermore, DeBusk's absorbent article having an embedded radiopaque element in a fold does not provide any means of visually identifying the article. In use, a surgeon or other medical personnel would have no way of visually knowing whether or not they were using an x-ray detectable article or a normal article. This would put the patient at risk if it was assumed that the article was x-ray detectable. Also, personnel would have to x-ray the towel separately in order to determine that the article was in fact, x-ray detectable. This is impractical and expensive.

Moreover, if an x-ray detectable article is used, it must be oriented or positioned so that the x-ray detectable material is far from the opening. However, with DeBusk, not

only is the article not visually identifiable, but also, there is no way of visually knowing where the radiopaque element is placed in the towel fold.

However, the present invention provides a surgical towel with “*x-ray detectable material protruding from the hem... visually identifying the surgical towel as x-ray detectable*” as recited by claim 23.

In use, the medical personnel can easily identify that the towel is x-ray detectable upon seeing the material protruding from the hem. Furthermore, personnel immediately know the location of the x-ray detectable material and can position the towel accordingly. The present invention saves time, effort, and increases safety.

Consequently, DeBusk ('128) does not anticipate claim 23 and the rejection should be withdrawn.

Because independent claim 23 is allowable over the prior art of record, its dependent claims 24-30 are allowable as a matter of law, for at least the reason that these dependent claims contain all features/elements/steps of their respective independent claim 1. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing allowability of these dependent claims, the dependent claims recite further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably distinct from the prior art of record.

For example, amended dependent claim 24 recites:

The surgical towel of claim 23, whereby the at least one stitched hem is stitched with *a thread of a different color than a color of the fabric, the thread color further visually identifying the surgical towel as x-ray detectable.*

As noted above, DeBusk provides no means of visually identifying the absorbent article as having a radiopaque element.

However, the present invention provides a surgical towel with a stitched hem that is stitched with *a thread of a different color than a color of the fabric, the thread color further visually identifying the surgical towel as x-ray detectable*. In addition to the protruding x-ray detectable material, the colored thread allows medical personnel to instantly identify that the towel is x-ray detectable.

Furthermore, dependent claim 30 recites:

The surgical towel of claim 23, the x-ray detectable material comprising *shaped, coded, numbered, or identifying characteristics to identify an x-rayed object as a surgical towel*.

DeBusk ('128) provides an absorbent article with an elongated radiopaque element. Even if detected by x-ray, there is no way to confirm that the x-rayed object is a surgical towel. Medical personnel would have no way of knowing what the x-rayed object was.

However, with the present invention, the shaped, coded, numbered, or identifying characteristics of the x-ray detectable material would allow medical personnel to identify whether or not the x-ray detected object is a surgical towel.

In situations where multiple operations are required, identifying the x-ray detected object would allow medical personnel to determine the level of urgency required to re-

enter the patient. This decreases expenses and unnecessary emergencies and improves patient's comfort.

Claims 9, 11-14 correspond to Claims 31-35

Independent Claim 31 recites:

A surgical towel, comprising:

a sheet of single-ply woven cotton fabric having four edges;

at least one hem stitched in at least one of the four edges;

*a thread of a different color than a color of the cotton fabric for stitching the at least one hem, the color of the thread visually identifying the surgical towel as x-ray detectable; and*

at least one piece of x-ray detectable material *attached to the fabric by the thread*, the x-ray detectable material allowing indication of the surgical towel upon x-ray.

Independent claim 31 is allowable for at least the reason that DeBusk ('128) does not disclose, teach or suggest the features that are highlighted in claim 9 above.

More specifically as noted with Claim 23 above, DeBusk ('128) does not teach attaching the x-ray detectable material to the fabric by the thread. DeBusk discloses capturing the radiopaque element within a first fold and folding the first fold to make a second fold and securing the folds with the radiopaque element *captured within the folds* (column 5, line 60 – column 6 line 6).

DeBusk does not disclose attaching x-ray detectable material to the fabric by thread as recited in amended Claim 31.

Furthermore, DeBusk's absorbent article having an embedded radiopaque element in a fold does not provide any means of visually identifying the article. In use, a surgeon or other medical personnel would have no way of visually knowing whether or not they were using an x-ray detectable article or a normal article. This would put the patient at risk if it was assumed that the article was x-ray detectable. Also, personnel would have to x-ray the towel separately in order to determine that the article was in fact, x-ray detectable. This is impractical and expensive.

However, the present invention provides a surgical towel with a stitched hem that is stitched with *a thread of a different color than a color of the cotton fabric... the color of the thread visually identifying the surgical towel as x-ray detectable*. The colored thread allows medical personnel to instantly identify that the towel is x-ray detectable.

Consequently, DeBusk ('128) does not anticipate claim 31 and the rejection should be withdrawn.

Because independent claim 31 is allowable over the prior art of record, its dependent claims 32-35 are allowable as a matter of law, for at least the reason that these dependent claims contain all features/elements/steps of their respective independent claim 9. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing allowability of these dependent claims, the dependent claims recite further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably distinct from the prior art of record.

For example, dependent Claim 35 recites:

The surgical towel of claim 31, the x-ray detectable material comprising *shaped, coded, numbered, or identifying characteristics to identify an x-rayed object as a surgical towel.*

As noted above in regard to dependent Claim 30, DeBusk ('128) provides an absorbent article with an elongated radiopaque element. Even if detected by x-ray, there is no way to confirm that the x-rayed object is a surgical towel. Medical personnel would have no way of knowing what the x-rayed object was.

However, with the present invention, the shaped, coded, numbered, or identifying characteristics of the x-ray detectable material would allow medical personnel to identify whether or not the x-ray detected object is a surgical towel.

In situations where multiple operations are required, identifying the x-ray detected object would allow medical personnel to determine the level of urgency required to re-enter the patient. This decreases expenses and unnecessary emergencies and improves patient's comfort.

#### Claims 15 and 18

Amended Independent Claim 15 recites:

A surgical towel, comprising:

a sheet of single-ply woven cotton fabric having four edges;  
at least one hem stitched in at least one of the four edges;



*a thread of a different color than a color of the cotton fabric* for stitching the at least one hem, *the color of the thread visually identifying the surgical towel as x-ray detectable; and*

at least one piece of x-ray detectable material *attached to the sheet of fabric by the thread*, the x-ray detectable material *protruding from the hem*, the x-ray detectable material comprising *shaped, coded, numbered, or identifying characteristics to identify an x-rayed object as a surgical towel*.

Independent claim 36 is allowable for at least the reason that DeBusk ('128) does not disclose, teach or suggest the features that are highlighted in claim 36 above.

More specifically as noted above in regard to Claim 1, DeBusk ('128) does not teach attaching the x-ray detectable material to the fabric by the thread. DeBusk discloses capturing the radiopaque element within a first fold and folding the first fold to make a second fold and securing the folds with the radiopaque element *captured within the folds* (column 5, line 60 – column 6 line 6).

Additionally, as shown in Figures 1 and 2 and highlighted in the claims, DeBusk discloses that the radiopaque element is captured within a first fold. DeBusk does not disclose "*the x-ray detectable material protruding from the hem*" as recited by amended claim 36.

Furthermore, DeBusk's absorbent article having an embedded radiopaque element in a fold does not provide any means of visually identifying the article. In use, a surgeon or other medical personnel would have no way of visually knowing whether or not they were using an x-ray detectable article or a normal article. This would put the patient at

risk if it was assumed that the article was x-ray detectable. Also, personnel would have to x-ray the towel separately in order to determine that the article was in fact, x-ray detectable. This is impractical and expensive.

Moreover, if an x-ray detectable article is used, it must be oriented or positioned so that the x-ray detectable material is far from the opening. However, with DeBusk, not only is the article not visually identifiable, but also, there is no way of visually knowing where the radiopaque element is placed in the towel fold.

However, the present invention provides a surgical towel with "*x-ray detectable material protruding from the hem... visually identifying the surgical towel as x-ray detectable*" as recited by claim 36.

Additionally, DeBusk does not disclose using *a thread of a different color than a color of the cotton fabric* for stitching the at least one hem, *the color of the thread visually identifying the surgical towel as x-ray detectable* as recited in Claim 36.

In use, the medical personnel can easily identify that the towel of the present invention is x-ray detectable upon seeing the material protruding from the hem. Moreover, personnel immediately know the location of the x-ray detectable material and can position the towel according. Furthermore, the colored thread allows medical personnel to instantly identify that the towel is x-ray detectable.

Further, DeBusk does not disclose an x-ray detectable material comprising *shaped, coded, numbered, or identifying characteristics to identify an x-rayed object as a surgical towel*.

As noted above in regard to dependent Claim 30, DeBusk ('128) provides an absorbent article with an elongated radiopaque element. Even if detected by x-ray, there

is no way to confirm that the x-rayed object is a surgical towel. Medical personnel would have no way of knowing what the x-rayed object was.

However, with the present invention, the shaped, coded, numbered, or identifying characteristics of the x-ray detectable material would allow medical personnel to identify whether or not the x-ray detected object is a surgical towel.

In situations where multiple operations are required, identifying the x-ray detected object would allow medical personnel to determine the level of urgency required to re-enter the patient. This decreases expenses and unnecessary emergencies and improves patient's comfort.

Consequently, DeBusk ('128) does not anticipate claim 36 and the rejection should be withdrawn.

Because independent claim 36 is allowable over the prior art of record, its dependent claim 37 is allowable as a matter of law, for at least the reason that this dependent claim contains all features/elements/steps of its respective independent claim 15. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing allowability of this dependent claim, the dependent claim recites further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably distinct from the prior art of record.

**Response to Claim Rejections Under 35 USC Section 102**

Claims 15 and 19 have been rejected under 35 USC Section 102(b) as purportedly being anticipated by DeBusk ('517).

**Claims 15 and 19 correspond to Claims 36 and 37**

Amended Independent Claim 36 recites:

A surgical towel, comprising:

a sheet of single-ply woven cotton fabric having four edges;

at least one hem stitched in at least one of the four edges;

*a thread of a different color than a color of the cotton fabric* for stitching the at least one hem, *the color of the thread visually identifying the surgical towel as x-ray detectable*; and

at least one piece of x-ray detectable material *attached to the sheet of fabric by the thread*, the x-ray detectable material *protruding from the hem*, the x-ray detectable material comprising *shaped, coded, numbered, or identifying characteristics to identify an x-rayed object as a surgical towel*.

Independent claim 36 is allowable for at least the reason that DeBusk ('517) does not disclose, teach or suggest the features that are highlighted in claim 36 above.

More specifically, as with DeBusk ('128), DeBusk ('517) **does not** disclose using a thread of a different color than a color of the cotton fabric to attach x-ray detectable material to the fabric.

Also, DeBusk ('517) **does not** disclose x-ray detectable material protruding from a hem and the x-ray detectable material comprising shaped, coded, numbered, or identifying characteristics to identify an x-rayed object as a surgical towel.

The same arguments made above in regard to Claim 36 apply to DeBusk ('517).

Consequently, DeBusk ('517) does not anticipate claim 36 and the rejection should be withdrawn.

### **Response to Claim Rejections Under 35 USC Section 103**

Claims 2 (corresponding to Claim 24), 10, 17 have been rejected under 35 USC Section 103(a) as purportedly being unpatentable over DeBusk ('128).

Claims 10 and 17 have been canceled.

As noted above, DeBusk ('128) does not anticipate claim 23 and the rejection should be withdrawn.

Because independent claim 23 is allowable over the prior art of record, its dependent claims 24-30 are allowable as a matter of law, for at least the reason that these dependent claims contain all features/elements/steps of their respective independent claim 1. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing allowability of these dependent claims, the dependent claims recite further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably distinct from the prior art of record.

For at least these reasons, Applicant respectfully submits that all pending claims patentably define over DeBusk ('128) and DeBusk ('517).

**CONCLUSION**

For at least the foregoing reasons, it is believed that all pending claims 23-37 are in proper condition for allowance. If the Examiner believes that a telephone conference would expedite the examination of the above-identified patent application, the Examiner is invited to call the undersigned.

**This Amendment was prepared by Applicant, and is being submitted without substantive change by the undersigned Attorney.**

Respectfully submitted,



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